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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,415	12/21/2001	Richard S. Foster	0071424	2788

7590 09/22/2004

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EXAMINER

GANEY, STEVEN J

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/027,415

Applicant(s)

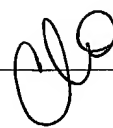
FOSTER, RICHARD S.

Examiner

Steven J. Ganey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 and 32-37 is/are allowed.
- 6) ☒ Claim(s) 7-29 and 31 is/are rejected.
- 7) ☒ Claim(s) 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Receipt is acknowledged of the amendment filed on June 24, 2004, which has been fully considered in this action.

#### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7, 9, 10, 13, 14, 18-21 and 24-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Pearse.

Pearse shows a floating fountain comprising all the featured elements of the instant invention, note specifically a tubular hollow base assembly comprising an inner base<sup>43</sup> and an outer base 45; tubular hollow connection member at 109; blocking valves 69/71/77/79/97; a primary nozzle member 85; plurality of secondary nozzle members 47/49; a pump 99; and a float body 1.

With respect to applicant's statements of intended use, i.e. (for receiving pressurized fluid from a pressurized source of fluid and communicating the pressurized fluid to the base assembly, wherein the pressurized source of fluid is located remote from the floating fountain), the device of Pearse is capable of performing applicant's intended use, therefore, the claims are fully

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anticipated. Note that a source of pressurized fluid could easily be connected to the pump 99 through a flexible connection at the intake 101 from a remote location.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8, 15, 16, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearse.

Pearse discloses all the featured elements of the instant invention except for the shape of the base assembly, the pressure range and volume and the type of fittings used for the nozzle members.

As to claim 8, the rectangular shape of the base assembly, such an arrangement would be within skill of one in the fountain art since such a shape or other geometry would not have an impact on the operation of the fountain any shape would perform equally as well and in view of applicant's own admission on page 9, lines 17-26, where it is stated that other geometries can be used.

As to claims 15 and 16, the pressure and volume flow are dependent on the type of pump chosen and the pump of Pearse would be capable of having a pressure within the range claimed and could provide the volume flow.

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As to claims 22 and 23, the type of connection fittings is merely a matter of design choice depending on the type of fitting desired and depending on the diameter size of the nozzle member compared to the base assembly.

6. Claims 11, 12 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pearse in view of Richardson.

Pearse discloses all the featured elements of the instant invention except for at least one of the nozzle members having a diffusion pin and the pressurized source being an irrigation system. Richardson shows a floating fountain with a nozzle 7 having a diffusion pin 15 and the pressurized source being an irrigation system 11. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a diffusion pin in one of the nozzle members of Pearse, since with such a modification the height of the spray can be regulated. As to the source of pressurized fluid being an irrigation system such a source could easily be connected to the pump 99 through a flexible connection at the intake 101, such as taught by Richardson, which may be required when the normal source of fluid being a pond or lake is low.

7. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pearse in view of Huffstutler.

Pearse discloses all the featured elements of the instant invention except for providing an infinitely variable valve between the pressurized source of fluid and the connection member. Huffstutler shows a fountain with an infinitely variable valve 35 between a pressurized source of fluid 37 and a connection member 33. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide an infinitely variable valve in the

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apparatus of Pearse, since with such a modification the pressure and flow of water to all the nozzle members can be regulated at one location.

*Allowable Subject Matter*

8. Claims 1-6 and 32-37 are allowed.
9. Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

10. Applicant's arguments with respect to claims 7-29 and 31 have been considered but are moot in view of the new grounds of rejection.

*Conclusion*

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

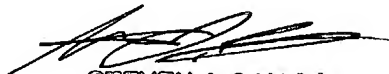
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven J. Ganey whose telephone number is (703) 308-2585. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar, can be reached on (703) 308-2087. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

sjg

9/20/04

  
STEVEN J. GANEY  
PRIMARY EXAMINER  
9/20/04